DAVID LORING GAMBLE
DARREL HOUGLUM

IBLA 76-652 Decided August 18, 1976

Appeal from decision of Oregon State Office, Bureau of Land Management, declaring mining claim locations null and void OR 011172.

Affirmed.

1. Mining Claims: Lands Subject to -- Mining Claims: Power Site Lands -- Mining Claims: Withdrawn Land -- Withdrawals and Reservations: Power Sites

   A mining claim located before August 11, 1955, on land within an existing power site withdrawal is properly declared null and void as the land was then closed to mineral entry. Void claims located prior to that date were not given life by the Mining Claims Rights Restoration Act of 1955.

2. Administrative Procedure: Hearings -- Mining Claims: Hearings -- Rules of Practice: Hearings

   In proceedings before the Department to determine the validity of a mining claim, notice and an opportunity for a hearing pursuant to the Administrative Procedure Act is required only where there is a disputed question of fact; where the validity of a claim turns on the legal effect to be given facts of record concerning the status of the land when the claim was located, no hearing is required.

3. Res Judicata -- Rules of Practice: Appeals: Generally

Where a decision by an officer of the Department has become final, the principle of res judicata will operate to bar consideration of a new appeal arising from a later proceeding involving the same claim and same issues, absent compelling legal or equitable reasons for reconsideration.

4. Mining Claims: Generally -- Mining Claims: Contests -- Mining Claims Rights Restoration Act

The Department of the Interior may contest the validity of any unpatented mining claims located on public land, including claims located within power site withdrawals; the Department's authority to contest the validity of mining claims was not diminished by the Mining Claims Rights Restoration Act of 1955.

APPEARANCES: William B. Murray, Esq., Portland, Oregon, for appellants.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

David Loring Gamble and Darrel Houglum appeal from the May 11, 1976, decision of the Oregon State Office, Bureau of Land Management (BLM), declaring their mining claim null and void. Their claim consists of the twenty (20) acres of land in the E 1/2 NW 1/4 SE 1/4, section 12, T. 32 S., R. 14 W., Willamette Meridian, Curry County, Oregon. The claim was originally located in 1948 by one Joseph V. Roman. That location was known as the "Alva Mine" placer mining claim. Another location, known as the "Dredge Hole" placer mining claim, was made in 1949. In 1952, Roman relocated the previous claims as the "Alva Dredge Hole Mine" placer mining claim. Finally, in 1959, Roman made a new location of the same land calling it the "Alva Placer Claim." The decision of the Oregon State Office rests on the following grounds. First, it held that all of the locations from 1948 to 1952 were invalid as they were located on land not open to mineral entry at that time. Second, it held that the most recent location, in 1959, was null and void because it had been so declared as a result of earlier proceedings before this

Department. Third, it indicated the land was segregated from mining on February 9, 1965, when an application for withdrawal was noted on the records of that office. The withdrawal, Public Land Order 3869, was promulgated November 12, 1965.

Appellants assert that they have been deprived of property without the due process of law provided for by both the Fifth Amendment of the Constitution and the Administrative Procedure Act (APA), 5 U.S.C. § 551 et seq. (1970). Specifically, they assert that because they did not receive either notice or an opportunity to be heard, their rights under the Constitution and APA were abridged.

[1] The claims located from 1948 to 1952 are situated on land that was withdrawn for power site purposes on December 12, 1917. Until August 11, 1955, all land withdrawn for power site purposes was closed to mineral entry. Mining claims located on land which is closed to mineral entry are null and void from their inception. United States v. Consolidated Mines & Smelting Co., Ltd., 455 F.2d 432, 444 (9th Cir. 1971); John Boyd Parsons, 22 IBLA 328 (1975); Albert Gardini, A-30958 (October 16, 1968); Leo J. Kottas, 73 I.D. 123 (1966), aff'd sub nom., Lutzenhiser v. Udall, 432 F.2d 328 (9th Cir. 1970). While the Mining Claims Rights Restoration Act of 1955, 30 U.S.C. §§ 621-625 (1970), opened certain lands within power site withdrawals to mineral entry, it did not give life to void claims which had been located on withdrawn lands prior to the date of the Act, August 11, 1955. Beverly Trull, 25 IBLA 157 (1976); Mickey G. Shaulis, 11 IBLA 116, 118 (1973); Day Mines, Inc., 65 I.D. 145 (1958).

[2] In a proceeding before this Department to determine the validity of a mining claim, notice and an opportunity for an evidentiary hearing is required only if there is a disputed question of fact. Where the validity of a claim turns on the legal effect to be given facts of record which show the status of the land when the claim was located, no hearing is required. United States v. Consolidated Mines & Smelting Co., supra at 453; Dredge Corp. v. Penny, 362 F.2d 889 (9th Cir. 1966), aff'g The Dredge Corp., 64 I.D. 368 (1957); 65 I.D. 336 (1958); Dredge Corp. v. Penny, 338 F.2d 456, 462 (9th Cir. 1964); Foster Mining and Engineering Co., 7 IBLA 299, 79 I.D. 599 (1972); Dorothy L. Benton, A-30729 (May 31, 1967). Clearly, the locations made from 1948 to 1952 were null and void from their inception, as the Oregon State Office held.

[3] The claim located in 1959 was challenged by this Department in an earlier proceeding. The Department contested the validity of the claim on several bases. A hearing was held before a

hearing examiner 1/ for the purpose of taking evidence on the charges. The contestee, Joseph V. Roman, failed to appear. The hearing examiner held that the Government had proved its charges and declared the claim null and void. Roman appealed to the Director of the BLM, who sustained the hearing examiner's conclusions and found the reasons offered for Roman's failure to appear less than convincing. Though Roman could have taken an appeal to the Secretary and then to the courts, if necessary, he did not do so. Therefore, the BLM decision was final.

The principle of res judicata and its counterpart, the finality of administrative action, operate to bar consideration of a new appeal arising from a later proceeding involving the same claim and the same issues. Ben Cohen, 21 IBLA 330 (1975); L. M. Perrin, Jr., 9 IBLA 370, 373 (1973); Eldon L. Smith, 6 IBLA 310, 312 (1972); Gabbs Exploration Co., 67 I.D. 160, 165-66 (1960), aff'd Gabbs Exploration Co. v. Udall, 315 F.2d 37 (D.C. Cir.), cert. denied, 375 U.S. 822 (1963).

[4] The Department was not prevented from contesting the mining claim by the Mining Claims Rights Restoration Act of 1955, 30 U.S.C. §§ 621-625 (1970). That Act provides that the Secretary may allow mining under certain conditions within a power site withdrawal. A locator wishing to avail himself of the benefits of the Act must notify the Secretary within sixty (60) days of the location of the claim. Within another sixty (60) days the Secretary must decide whether to allow mining or whether to hold a hearing in order to determine whether to allow mining. However, there is nothing in the Act which would prevent the Secretary from challenging a mining claim by contest proceedings to determine the validity of the claim. In an analogous situation the Department stated:

> We should point out that there is nothing in the Multiple Mineral Development Act [30 U.S.C. §§ 521-530 (1970)] or the Surface Resources Act [30 U.S.C. §§ 611-615 (1970)] which, apart from the limitations as to the effect of proceedings under each act, limits or otherwise affects the inherent power and duty of the Secretary of the Interior to determine whether a claim is valid. The only limitation upon this power is that adequate notice of the charges against the claim must be given to the mining claimant before the facts may be conclusively determined and a claim may be declared null and void and canceled. Cameron v. United States, 252 U.S. 450 (1920); Best v. Humboldt Placer Mining Co., 371 U.S. 334 (1963). Thus, it has been held that the

1/ The title "Hearing Examiner" has been changed to "Administrative Law Judge." 37 F.R. 16787, 38 F.R. 10939-40.

> Secretary has authority to initiate contests against mining claims even though no patent applications have been filed and no apparent public need for the land has been shown. Davis v. Nelson, 329 F.2d 840 (9th Cir. 1964).

Arthur L. Rankin, 73 I.D. 305, 313-14 (1966). See also United States v. Grigg, 8 IBLA 331, 79 I.D. 682 (1972); 43 CFR 4.451-1. Because the Department had the authority to contest the claim and because the decision was final, as Roman took no appeal from it, the appellants are barred from again raising the same issues involving the same claim. Appellants have made no factual assertions of rights stemming from any mining claim located or relocated when the land was open to location and which has not been previously adjudicated null and void. They have been afforded notice of the reasons why the subject claims are void, yet they have failed to show error in the decision of the Oregon State Office. Their general allegations of denial of due process are insufficient where there is no showing of a sufficient property interest to command the protection of due process.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing
Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

Joan B. Thompson
Administrative Judge